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1   RECORD OF ORAL HEARING

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3   UNITED STATES PATENT AND TRADEMARK OFFICE

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6   BEFORE THE BOARD OF PATENT APPEALS

7   AND INTERFERENCES

8   ———————

9

10   Ex parte JAMES MCCROSSIN, DEAN HILLER,

11   and RICHARD KORNUTIK

12   ———————

13

14   Appeal 2007-1796

15   Application 09/443,038

16   Technology Center 3600

17   ———————

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19   Oral Hearing Held: November 15, 2007

20   ———————

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23 Before HUBERT LORIN, ANTON W. FETTING, DAVID B. WALKER,

24 Administrative Patent Judges

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35 The above-entitled matter came on for hearing on November 15, 2007, at the

36 U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia,

37 before Dominico Quattrociocchi, Free State Reporting, Inc.

1   P R O C E E D I N G S

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3   JUDGE WALKER: Hello, this is Judge Walker in Hearing Room B.

4We are ready for Calendar Number 39. Thank you.

5   MS. BEAN: Calendar Number 39, Mr. O'Dowd.

6   JUDGE LORIN: Good morning, Mr. O'Dowd.

7   MR. O'DOWD: Good morning.

8   JUDGE LORIN: This is Appeal 2007-1796.

9   MR. O'DOWD: That's correct; Mr. McCrossin. James McCrossin;

10first named inventor.

11   JUDGE LORIN: I believe so. I believe that's correct. Yes. Alright,

12Counsel, when you're ready. You have 20 minutes. You may proceed.

13   MR. O'DOWD: Good morning. This invention concerns providing

14local information to users of the internet. You can type in a search --

15   JUDGE FETTING: Can you speak up a little bit? I'm having a little

16trouble hearing.

17   MR. O'DOWD: Sure. Let me take a deep breath. What we're talking

18about today is about providing local information over the internet. So, when

19you type in that search for a floral shop into a regular search engine, you can

20get floral shops for New York City, California and Tokyo as well. So we're

21trying to provide local information. So, what is contemplated by the present

22invention is that each individual will prepare or have prepared for them a

23web site or web page, and you'll assign to that web site a physical location.

24So I will create a, a web site on the system, and I will have a physical

25location, say my house in Arlington, for example, and so my web site will

26have an Arlington, Virginia location assigned to it. A floral shop near the

1PTO would have a location -- would have a web site, would have a location

2near the Patent Office assigned to it. By the same measure, a floral shop in

3Nebraska would also be on the server and have a location there and a user

4from Nebraska would also be. So, when I do a search for a floral shop, what

5can be done is you can compare my web site and the location that's assigned

6to it with the locations that are assigned to the web sites of the floral shop

7that's down here at the PTO and the one that's in Nebraska, and provide

8links on my website based on that relationship. So, the one that'll appear

9first, for example, would be the floral shop that's in Arlington, Virginia;

10provide that on my website -- the one that has been assigned to me. So, if

11you have a server located in New York, it will be storing all of these

12websites. New York really has no bearing whatsoever on this invention

13because it is the websites themselves that have locations assigned to them.

14The server where these websites are found can be located anywhere on earth.

15 There are two rejections here in the -- that we're appealing from. The

16first is a 112 second paragraph rejection where the Examiner is objecting to

17the language identified by a physical location as being vague. I would

18suggest to you that if you read the claim as a whole, I think that the term is

19not vague at all. Physical location should be interpreted as a place on earth.

20That, that's in line with the dictionary definitions, that's in line with the

21examples given in the specification. Reading the claim as a whole, you're

22talking about the relationship between physical locations and whether it -- or

23presenting links on a website based on a relationship between those physical

24locations. I think that the language is quite clear. As with many cases that

25come before this panel, it has been pending for quite some time and we are

26on our fourth Examiner; however, the language that's being complained of

1was vetted with one of the prior Examiners and, you know, withdrew un-

2objected to is now being objected to new. We ask that you look at that issue.

3I think that the term is clear in the claim and that the 112 second paragraph

4rejection should be reversed.

5   The -- so let's take Claim 1 as an example. So, Claim 1 is directed to

6creating or having created a number of websites. So, getting back to my

7example before, my website, the floral shop here at the PTO, the floral shop

8in Nebraska and an individual in Nebraska; each website is created. Each

9website will have a unique URL assigned to it so that the website is

10addressable through a unique URL. Also, as I've stated, each website will

11have assigned to it a physical location. One of those websites is assigned to

12me. Alright, so as set forth in the claim, it is a user's website. So it is my

13website. The physical location is what I choose, which let's say would be

14my house location in Arlington, Virginia. The final element is that you are

15going to provide links on my website -- on the user's assigned website based

16on the relationship between the location or the physical location of my

17website and the physical location of the other websites that are a part of this,

18part of this system. The Examiner is relying on two references; Ye and

19Bonnaure. Now the Ye reference refers to something called IPv6

20addressing. Okay, so --

21   JUDGE FETTING: This is the secondary reference. It's not the

22primary reference. Correct?

23   MR. O'DOWD: That is true. I'd like to go in this, in this order. The

24Ye reference is pointing out that IP addresses can have a geographic

25component to them. But, it has to be pointed out that an IP address is not a

26URL. An IP address is not a website. So an IP address is an elaborate string

1of digits; number, dot, number, dot, number, dot, number. And what Ye is

2proposing is that if I am assigned a IP address, that you will assign it to me

3based on GPS coordinants such as longitude, latitude, altitude. Assign me a

4-- I'm sorry, not a URL -- assign me an IP address that indicates my

5location. Okay. Now once you've done that, Ye talks about a couple of

6applications. One is that -- let's say I'm in Nebraska and so there's a lot of

7tornados and if there's a weather alert that says there's a tornado watch

8going on, then send out a message to those IP addresses, okay, those IP

9addresses that fit the GPS coordinants of the affected area, okay. Another

10thing that you can do it that if you are accessing a server, and a server will

11have it's own IP address associated with it, you can compare the two IP

12addresses and the server can respond only to those, you know, IP addresses

13that are, say, within a particular area of it. So for example, if the USPTO

14website here in Arlington is chosen only to respond to those who are in

15Northern Virginia, I would be able to access the PTO website while the

16individual in Nebraska would not based on a comparison of the IP address.

17   JUDGE FETTING: But a URL has a specific IP address assigned to

18it. Yes?

19   MR. O'DOWD: That's true.

20   JUDGE FETTING: So once you know a URL, if you have an IP

21address that is identified by a geographic location, the URL is in fact

22identified by that geographic location by means of the IP address.

23   MR. O'DOWD: That's true.

24   JUDGE FETTING: Okay, so that would appear to meet the

25requirement of Claim 1 that the URL is identified by a physical location.

26   MR. O'DOWD: The URL -- yes, it'll have to be in a table to assign it

1to a particular address and so if you have assigned to a person a geographic

2location within their IP address, then the URL would be, would be linked to

3that particular IP address.

4   JUDGE FETTING: Okay.

5   MR. O'DOWD: Alright, so the -- but there is more, there's more to

6the claim then, then just that feature. There is the creation of these websites,

7and the assigning of information to each website as to location and then

8selecting links to provide on a particular user's website based on a location

9relationship between these, these websites. So inYe, okay, for example, if

10I'm accessing a server in New York about a floral shop in Arlington,

11Virginia, the, the network addresses that we're talking about are mine in

12Arlington, Virginia and the network address would be the server in New

13York, and truly has no bearing whatsoever on what it is that I'm looking for.

14Again that IP address is referring to the server, that server can be anywhere.

15   The Bonnaure reference is quite similar to Ye in that Bonnaure is also

16trying to assign a location to the person that's calling into the system. So

17when you turn on the web TV system, the system calls into a central

18location. The central location is looking at the phone number that's being

19dialed, and as we know, from a phone number you can, you can pull an area

20code, you can pull an exchange and you would be able to determine the

21location of the person. Well why do they do this? Well they do this because

22the person is about to dial into internet access and they'd like to reduce cost

23as much as possible. So what they do is they take at location information

24and they're able to calculate telephone charges and provide back to the user

25a telephone number that that person should use to access the internet. Web

26TV is a set atop box, the screen of the television set becomes you're a -- like

1your computer monitor for accessing, accessing the internet. So, so when

2you look at the two references, the two references are talking about how to

3access, how to access the internet, but both are focusing on a network

4address for, for the user. Ye is focusing on the IP address and Bonnaure is

5focusing on the telephone number that is being used to dial into the system.

6   JUDGE FETTING: Well, that's -- but it's --Bonnaure is very specific

7that it's mapping that to a physical location; an address, and using that

8address as a vehicle for targeting the services and sites that are then

9presented back to the, to the, to the user.

10   MR. O'DOWD: Okay.

11   JUDGE FETTING: So, I mean, it does discuss the data -- the

12geographic data base. It happens to use the telephone number as a, as an

13index in that data base, but it's -- I mean to me, it's pretty clear that it's

14keeping a geographical data base.

15   MR. O'DOWD: Okay, again there I have no assigned website to the

16user that's accessing the system.

17   JUDGE FETTING: And that appears to be the issue.

18   MR. O'DOWD: There is, there is no, there is no website that it's

19being assigned to the user. There is no, there is no physical location

20assigned to such a website since there isn't a website assigned to the user.

21   JUDGE FETTING: There's a location assigned to the user, there's

22just not a website assigned to the user.

23   MR. O'DOWD: So you assign a website to the user; that's missing.

24Assign a location to that website; that's missing.

25   JUDGE FETTING: Right.

26   MR. O'DOWD: then presenting links on that website based on a

1relationship between the location of that website with the other websites that

2are on this, this server; that is missing. In Claim 1, there are three elements

3to the claim and, you know, all three elements are missing.

4   JUDGE FETTING: They're missing because there's no website for

5the user,

6   MR. O'DOWD: There is no website for the, there is no website for

7the user. That's correct. There's also -- remember that we're talking about

8comparing a relationship between the location that's assigned to a website,

9the user's website and a location that's assigned to the website of the, you

10know, of the, of the -- one of the other individual websites that are on, that

11are on this system. And, you know, so that is, that is an additional feature

12to, you know, to keep in mind. There isn't anything in Bonnaure that

13suggests that you're looking at a network address to say, I'll present this

14information to the user. My, my network address comes back with an

15Arlington, Virginia location. How is that going to be used to provide local

16information? Perhaps it's used by searching for Arlington, Virginia in

17metafiles in a, in a particular website, but it's not being used to take another,

18another party's website and say this is the, this is an Arlington, Virginia

19website because it has that assign Arlington to it. Present a link on my web

20page to that particular site.

21   JUDGE FETTING: Where does it say, presented on the webpage?

22   JUDGE LORIN: It say's here --

23   JUDGE FETTING: On said user website. Right. Okay.

24   JUDGE LORIN: Counsel, I've got a couple questions here before

25you continue. Can you explain to me by being identified by a physical

26location? What does that mean? You said creating a plurality of first

1websites. You know, just reading it off the top of my head, I'm thinking of

2a webmaster who sits there and designs websites.

3   MR. O'DOWD: Right.

4   JUDGE LORIN: Right, he's just designing a website and on this

5website -- well for each website that this webmaster designs, the webmaster

6will, will find a unique URL and, and, and that website will be labeled as

7such. What do you mean when you then say, each of said first websites

8being identified by physical location?

9   MR. O'DOWD: As filed, it was associating the physical location with

10the URL. That was objected to by, by the Examiner.

11   JUDGE LORIN: What do you mean by associated? Do you mean

12that the URL actually mentions the location or --

13   MR. O'DOWD: That, that you have a location in that, that is related

14to the, to the URL such as --

15   JUDGE LORIN: Like .US or .CA?

16   MR. O'DOWD: No, like, like a, like a data base entry --

17corresponding entry. URL which would be in the example here my home

18phone number would be the .abra.com, I believe is the example that's given,

19okay, is my personal website on the system table look up would have a

20corresponding entry in Virginia for that website.

21   JUDGE LORIN: So this, this step is saying creating first websites

22being identified in a data base. In other words, you're corresponding a

23website with a physical location. You're corresponding the two?

24   MR. O'DOWD: Corresponding the two, that's right.

25   JUDGE LORIN: This identification is identified. It's not that

26identified on the website. It's not that it's identified by a brick and mortar

1store or something of that sort.

2   MR. O'DOWD: The, the patent specification tries to keep that open

3because as presented in dependent claims, you can change the location. So,

4for example, I have to do several trips to my California office, okay, and so

5when I go to California and I need a flower shop the information that's being

6provided providing me a link to the one at the PTO is, is useless to me. By

7changing the location of the, the physical location assigned to my website to

8California -- San Jose, California, now when I'm looking for a floral shop, I

9will get a link to the Silicon Valley florist.

10   JUDGE LORIN: Right, but what you're discussing is a search

11technique. You're searching for websites for flower shops in Arlington.

12Right? This -- what I'm reading here is you're creating a first website and if

13I understand you correctly, you're saying creating a first website being

14identified by physical location. Now that I understand you, what you're

15saying is, you're creating a website, a webpage like we have here in front of

16our screen and on the screen is the name of the location.

17   MR. O'DOWD: In the example in the, in the spec, the actual location

18can be presented on the webpage, but I don't think that that's necessary.

19The identification is that you have the computer system knows that the

20location for that website for purposes of providing links which is what I

21mean by reading the claim in its entirety. Providing -- for providing links

22the location for that website is Arlington, Virginia.

23   JUDGE LORIN: Okay, that leads me to another question.

24   MR. O'DOWD: Alright.

25   JUDGE LORIN: The last step in the claim calls for selecting links as

26you say based on a relationship between the physical locations. Now does

1this cover a webmaster picking links and just creating a webpage with links

2with a physical location that, that corresponds with one on the, on the first

3websites?

4   MR. O'DOWD: So, the, the example we have is we have four

5websites total; an individual in Arlington, an individual in Nebraska, a floral

6shop in Arlington and a floral ship in Nebraska. So because of the locations

7that are assigned to each of those websites, the link that's going to be

8provided to me for a floral shop will be the one in Arlington based on the

9relationship between the physical locations assigned to the websites.

10   JUDGE LORIN: I think the difficulty I'm having here is that you're,

11you're talking in terms of this method automatically and using a computer it,

12it seems to understand what the links are required knowing the physical

13location of the first websites, but the claim is much broader then that. Isn't

14it? I mean the claim is a method of providing information, collecting

15information, creating websites, assigning websites and selecting links. In

16fact, I don't even see a computer here doing any of these steps. Is that not

17true?

18   MR. O'DOWD: Well, it does say that we are creating plurality of

19websites at the first at the first computer system.

20   JUDGE LORIN: Yeah, but why -- don't, don't -- I mean people have

21been doing that since 1994. I mean isn't that just a matter of someone just

22creating a website. I mean I understand what you're trying to say with

23regard to prior art, but this -- the questions I'm raising to you is a claim

24construction issue.

25   MR. O'DOWD: Sure.

26   JUDGE LORIN: Which on many of these cases I see is missing. The

1panels don't bring it up and the Examiners don't bring it up. But this case

2seems to be very simple. You have collecting, creating, assigning and

3selecting, which anyone can do who understands how to make, make a

4website.

5   MR. O'DOWD: Creating websites is certainly well know in the art

6prior to, to the filing date of this, this invention. I think that the, the feature

7of assigning to a website a location is what is, is quite different. It might,

8you know, be present now, but, but at that particular time, you know, the Ye

9-- the proposal by Ye has never been implemented. When you access

10Comcast, if that's your cable provider at home, Comcast has a string or a

11series of, of internet addresses and assigns them to you almost randomly.

12And, and so that location information is quite missing. The early days of the

13internet was to provide one website for, you know, for a massive

14corporation, such as Toyota or Starbucks and the location information for

15that website would be, you know, would be missing completely. Starbucks

16is an international company. What Starbucks could do is create on the

17system a website for the Starbucks that's located on Dulany Street and that

18is the website on the system. And so when you're looking for a coffee shop,

19the location of my website is Arlington, Virginia. The location -- the

20physical location assigned to that Dulany Street Starbucks is, is the

21relationship that we're looking, but it is assigned to the website and the

22relationship is what we're focusing on to provide links on my webpage -- on

23my website to provide local information to the user. You still have

24questions?

25   JUDGE LORIN: No, I'm fine, I'm fine. Thank you. Thank you for

26answering.

1   MR. O'DOWD: Alright.

2   JUDGE FETTING: I guess I'm -- Am I correct that the only real

3issue in this case is the absence of a user website? I mean it's -- in that last

4sentence, I mean -- if you didn't have user websites, you certainly have

5selecting links to a plurality to other websites. For presentation based upon

6relationship between the physical location identified by those websites and

7the user's physical location, it would seem that that is dead spot on shown

8by the, the PCT reference. It's just that that one doesn't present it on a, on a

9user webpage or is that accurate?

10   MR. O'DOWD: I don't think so and I'll tell you why. The -- , in

11Bonnaure which is the PCT reference, the information might be, might be

12tailored to, to the individual, but a particular website does not have assigned

13to it a physical location to be compared and contrasted with the, with the

14physical location of the user. It is unclear to me, at least, how that

15information is going to be provided. It could be provided by simply doing a

16search for, you know, floral shops in --

17   JUDGE FETTING: Well, Bonnaure is clearly presenting links to

18places that are geographically close to the user back to the user. Usually you

19request a client's cell phone number, the service provider web or web TV

20server can select an appropriate supplier or warehouse closest to the client's

21location. And then later on, for example, a specific menu of items

22associated with particular geographic locations can be offered for a

23particular clients based upon the, the requesting client's telephone number.

24So it's, it's clearly creating links that are predicated upon the relationship of

25the geographic location of the people providing the services compared with

26the person making the request. So again, it, it seems that the only real

1distinction is, is using a user's web, website as the platform for, for, for

2providing that display.

3   MR. O'DOWD: But the, the assignment of the physical location to

4the website is not necessarily linked to the network address. And so the

5system that's provided here is -- it has greater flexibility and better, better

6advantages and that you will find such features in the dependent claims and

7that is argued in the Appeal Brief, but the --

8   JUDGE FETTING: Well, it certainly wants to, at least, be identified

9by that physical location from them being able to present them back.

10   MR. O'DOWD: But the physical -- again physical location, of course,

11is the physical location of where I am as opposed to the physical location of

12my webpage or my website.

13   JUDGE FETTING: Yeah, well that, that distinction is not -- I don't

14see that distinction in the claim. It just says identified by a physical location.

15   MR. O'DOWD: But the last, the last step is selecting links to a

16plurality of said first websites other than the user website.

17   JUDGE FETTING: Again, that seems to be the distinction; if we

18don't have a user's website.

19   MR. O'DOWD: That's true, we don't have, we don't have a user's

20website and we don't have assigning of physical location to the, to such a

21website for the purposes of selecting links for presentation to the user.

22   JUDGE FETTING: Okay, that'll be all my questions.

23   JUDGE LORIN: You have any more comments, Counselor?

24   MR. O'DOWD: I do not. Of course, refer you back to our Appeal

25Brief and I thank you very much for your time.

26   JUDGE FETTING: Thank you, Counselor.

1   JUDGE LORIN: Thank you, we'll take your comments under

2advisement. Thank you.

3   (Whereupon, the proceedings concluded.)